

The Honorable Commissioner of Patents
and Trademarks

Page 8

REMARKS

The present application contains claims 3, 5 to 8, and 15 to 18.

Applicant has amended the specification to clarify the terms 'converge' and 'convergence' used on page 9 of the specification by stating 'by convergence to a constant value, it is meant that the availability remains substantially the same after an additional simulation including an additional link'. Support for this amendment can be found, for example, on page 9, line 29 '[...] if U and A are changing very little[...]' and throughout the originally filed specification.

Applicant has amended claim 3 to better describe the steps of the simulation method for the network availability. Support for the amendment of the claim 5 and its dependent claims can be found, for example, in Figure 5, and from page 10, line 3, to page 12, line 6.

Applicant has added new claims 15 to 18, directed to software code implementing the claimed simulation method. Support for the new claims can be found throughout the originally filed application, it should be apparent to a person skilled in the art that the present invention can be implemented through software for performing the simulation on a computer.

The amendment to the claims is fully supported by the application as originally filed. No new matter has been introduced by way of the amendment.

The Examiner has objected to the expression 'if no, determine if U and A converge' at line 28 on page 9, under 35 U.S.C. 112, first paragraph. In response, Applicant has amended the specification to clearly state that A converges to a constant value, and that 'by convergence to a constant value it is meant that the availability remains substantially the same after an additional simulation including an additional link'.

Hence, it is respectfully submitted that the specification meets the requirements under 35 U.S.C. 112, first paragraph. Applicant respectfully requests the Examiner to withdraw the rejections.

The Examiner has rejected claim 2 under 35 U.S.C. 112, second paragraph, stating that

The Honorable Commissioner of Patents
and Trademarks

Page 9

the condition 'until the summed unavailability and availability has been determined to converge' cannot be known in advance. Claim 2 has been canceled without prejudice or disclaimer, thus rendering the Examiner's rejection moot.

The Examiner further provisionally rejected claims 1-14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-5 and 12 of co-pending Application No. 09/709,340.

Applicant respectfully requests reconsideration and withdrawal of this objection in view of the amendments made herein and the following comments.

Applicant submits that the instant application, as claimed by the amended claims, is directed to a simulation method of determining service availability of a communications network with multiple failures. The instant application is a CIP application of 09/709,340. The multiple failures aspect of the instant application has been described and discussed, for example, at:

Page 3, line 29 to page 4, line 12; page 10, line 5 to page 12, line 6; page 12, lines 6 to 23; page 13, line 26 to page 14, line 17; page 15 lines 27 to 31; page 16, lines 1 to 27; page 16, line 29 to page 18, line 16; and in Figures 3, 5, 9 to 11, 17 to 22.

Therefore, Applicant submits that the present is sufficiently and patentably distinct from 09/709,340, and fully supported by the disclosure as exemplified in the above. Withdrawal of the Examiner's rejection under the judicially created doctrine of obviousness-type double patenting, is respectfully requested.

Applicant respectfully requests reconsideration of this application, based on the foregoing amendments and remarks.

Respectfully Submitted,



John D. Harris
Registration No. 39,465

JDH/XL/cw
c/o

GOWLING LAFLEUR HENDERSON LLP

The Honorable Commissioner of Patents
and Trademarks

Page 10

160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3 CANADA
Telephone: (613) 233-1781
Facsimile: (613) 563-9869